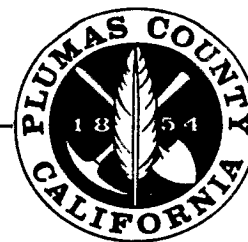


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August 8, 2000

CALFED Bay-Delta Program
 1416 Ninth Street, Suite 1155
 Sacramento, CA 95814

Attn: Steve Ritchie

RE: OPPORTUNITIES TO IMPROVE THE "FRAMEWORK FOR ACTION"
 IN THE CALFED RECORD OF DECISION

Dear Steve:

SUMMARY OF ISSUES

A landmark water agreement titled "California's Water Future: A Framework For Action", was released June 9th, 2000 by Governor Davis and Interior Secretary Bruce Babbitt. The "Framework" was authored by Davis and Babbitt and includes the final comments of invited agricultural interests, invited water districts, selected environmentalists and government, as well as the perspectives of transnational water sales brokers. *"Today, California is launching the largest and most comprehensive water program in the world",* said the Governor, *"Were unveiling today a blueprint which will chart California's course for the next 30 years."*

Apparently, the "Framework" represents the last input process before the issuance of the CALFED Record of Decision (ROD). The ROD, which will be signed by Babbitt and Davis, is scheduled to be released by the end of August.

Plumas County is concerned that the newly released 50 page "Framework" document will receive undue consideration in the CALFED ROD. Undue consideration would trigger serious CEQA and NEPA (environmental impact and public disclosure) concerns. The "Framework" lacks the environmental documentation and the open public review that is required if the new recommendations in the "Framework" are, in fact, new CEQA/NEPA alternatives that will be included in the CALFED ROD. Some "Framework" recommendations are significant departures from the draft EIR/EIS. The public EIS/EIR comment period has been closed since September, 1999. The CALFED Federal Advisory Committee Act (FACA) chartered Bay-Delta Advisory Committee (BDAC) process was finished in early June. Are these new "Framework" recommendations new EIS/EIR alternatives, high level political and stakeholder last minute wishes or demands, or some other kind of executive directive?

The final recommendations of the FACA BDAC advisory committee's five years of work were transmitted into the CALFED public record on June 6th, 2000. BDAC made final recommendations (in addition to hundreds of pages of letters and interim comments) that were agreed to by some BDAC members and opposed-partially or entirely by others.

August 8, 2000
CALFED Bay-Delta Program
Attn: Steve Ritchie
Page 2

In addition the NEPA/CEQA public comment/administrative appeal process continues with the release of the final EIS/EIR in July, 2000. The EIS/EIR, by law, responds to hundreds of pages of public review and comment on the draft EIS/EIS.

Since the status or weight to be given to the "Framework" in the ROD is unclear, Plumas County's comments will focus on recommendations in the "Framework" that appear to be new alternatives which are unsupported by an analysis of their environmental effects and unsupported by the public review and comment processes which are required by NEPA and CEQA.

Plumas County's concerns are summarized below:

- Providing full water entitlements for the export areas seems to have replaced fixing the Delta as the primary goal of CALFED.
- Selective exemptions for the export pumps in the Delta set dangerous and capricious precedents for the Endangered Species Act.
- Endangered species Act exemptions for the Delta export pumps also reverse decades of area of origin laws and water rights law.
- The Framework recommends utilizing the best available science and ongoing independent science evaluation of all CALFED programs and actions except the baseline. The baseline assumptions are the foundation upon which the whole CALFED program is built. The Framework recommends that independent science review begin **after** the highly controversial baseline is incorporated into the ROD. Using adaptive management to chart the CALFED program- even with the best available independent science- cannot overcome significant flaws in the program resulting from the unscientific baseline assumptions.

A FRAMEWORK FOR REACTION: DISCUSSION

Plumas County believes that the "Framework's" commitment to full Delta water export entitlement is a wrongheaded approach to solving the Delta's water problems. When the state and federal projects were originally constructed, the water rights system and the Area of Origin statutes guaranteed that the area's of origin (which are located mostly in Northern California), would not be deprived of water in times of water shortage. In addition, the junior water rights holders (mostly CVP and SWP export water users in Southern California) would remain responsible for environmental problems caused by the SWP and CVP projects.

The "Framework" alludes to the problem that the exporters' water supply shortages are also associated with significant financial liabilities resulting from the water users' paying for water

August 8, 2000
CALFED Bay-Delta Program
Attn: Steve Ritchie
Page 3

infrastructure that rarely or never receives any actual "entitled" water. As the Contra Costa Times reported on June 10th, *"In an interview Babbitt said that without such an agreement California not only faces water shortages and environmental crisis, but the lack of a comprehensive water solution could affect the state's ability to borrow money."*

These are related issues with many potential solutions- none of which were described or analyzed in the Draft EIS/EIR. The draft EIS/EIR provided inadequate economic analysis on even the most fundamental fiscal issues associated with CALFED expenditures. Therefore, there was no opportunity in the draft EIS/EIR to evaluate and analyze alternative ways to address debt restructuring as a separate issue from guaranteeing full entitlements in an oversubscribed water system. Pages 9 and 10 of the "Framework" state, *"Provide a commitment that there will be no reductions, beyond baseline regulatory levels ...in Delta exports to state and federal project water users resulting from measures to protect fish.... It is anticipated that water deliveries will remain at recent levels.... Water for south-of-Delta CVP agricultural contractors ...will be increased by 15% or greater of contract totals..."*

In Plumas County's extensive comments on the draft EIS/EIR, the County cautioned CALFED not to rely on the Monterey Agreement as the foundation for CALFED's approach to water reliability and affordability. The "Framework" recommends that CALFED commit to full water entitlements for Delta exporters. In essence, the "Framework" recommends that the CALFED ROD continue to rely on and codify the Monterey Agreement. The Monterey Agreement, which is under continuing litigation, remains an unreliable foundation for the CALFED Record of Decision. The Monterey Agreement is being litigated because it reduces the State Water Project's Contractors' construction debts for the completed parts of the State Water Project (SWP) and commits the state's taxpayers to financing and building the physical and legal infrastructure to provide full SWP entitlements. The Monterey Agreement also eliminates the right of any SWP contractor to invoke the "permanent water shortage" provisions (18b) of the SWP, and eliminates the section (18a), which guarantees Area of Origin protections in the SWP contracts during water shortages. Plumas County, being an area of origin SWP contractor, had the choice to sign or not to sign the Monterey Agreement. Plumas County refused to sign the Monterey Agreement because the Monterey Agreement was implemented without adequate public disclosure about the effects of restructuring the SWP debt and eliminating sections 18a and 18b.

The Plumas County Board of Supervisors again cautions CALFED not to make the same mistake with the ROD as was made with the Monterey Agreement. Two wrongs do not make a right. The ROD **cannot** adopt the provisions of the "Framework" which commit CALFED to providing full water entitlements unless the ROD also provides full public disclosure of the environmental and fiscal effects of full build out of the SWP (under the Monterey Agreement and other repayment and financing scenarios) throughout the problem area and the solution area.

August 8, 2000
CALFED Bay-Delta Program
Attn: Steve Ritchie
Page 4

The Plumas County Board of Supervisors is also concerned about the "Framework's" silence about, and apparent lack of commitment to, upholding the existing water rights system and Area of Origin protections. The Area of Origin statutes are mentioned once in the "Framework", in the "Regional Approach..." section, on page 39. California's existing senior and junior water rights system is never mentioned, even in the context of SWRCB permits and approvals on pages 9, 16, 17.

The "Area of Origin" statutes are **statewide** statutes, which enabled the development of the CVP and SWP water supply projects, **by balancing the economic and environmental needs of the export areas in the south with the needs of the water source areas in the North**. Removing legal and financial barriers to full exports undoes these checks and balances, so that the water and its associated economic opportunities are transferred from the source areas to the export areas, while the water source areas and the CALFED solution areas remain selectively responsible for the Endangered Species Act (ESA). The selective application of the ESA, in turn, provides a regulatory incentive for more and more "voluntary" water sales to the Environmental Water Account (EWA).

As individual landowners act in their individual best interest and sell surface and ground water to the highest bidders, they doom their basin neighbors to Owens Valley outcomes, without the protections of water district wide approval. Page 27 of the "Framework" states, *"CALFED recognizes that one barrier to an effective water transfer market is the lack of incentive for individual landowners to utilize available water conservation technologies because any water savings frequently accrue not to the landowners but to the irrigation district or water supply agency. CALFED will develop and support proposals to remove this disincentive to voluntary deployment of water use efficiency improvements."* The "Framework" again chooses to alternative of facilitating full exports instead of proposing and analyzing other means to promote landowner adoption of water use efficiency measures.

The "Framework" ignores or regionalizes key provisions of the original balancing provided by the existing water rights system and Area of Origin statutes and proposes a "new" balance. This balance sets a course of bending environmental law for the benefit of junior water rights holders, eliminating independent science review of the baseline supply and demand and water quality assumptions, and eliminating public input and decision-making on the Hood diversion. The Hood diversion is the second leg of the Peripheral Canal (which was defeated by the state's voters in the 1980's). The "Framework" shortcuts public decision-making on the Peripheral Canal by scheduling the EPA's analysis of alternative treatment opportunities statewide to be concluded **after** water quality analyses at the Delta export pumps are set to trigger the construction of the Hood diversion in 2007 (pg. 20).

August 8, 2000
CALFED Bay-Delta Program
Attn: Steve Ritchie
Page 5

On Pages 30 and 31, the "Framework" states that CALFED will *"evaluate and determine whether additional protective measures (regulatory and /or incentive-based) are necessary to protect beneficial uses by the end of 2004. Consistent with the above policy, CVRWCB, with the support from DWR and DHS, will begin implementation of appropriate source control measures (e.g., advanced wastewater treatment, local drainage management practices) by the end of 2006." ... The /Delta Drinking Water/ Council will complete final assessment and submit final recommendations on progress toward meeting CALFED water quality targets and alternative treatment technologies by the end of 2007.*

Plumas County also notes that the "Framework" proposes a governance structure that eliminates all elected officials except for water agencies. Local government representation from the CALFED Commission and the Advisory committee has been eliminated in the "Framework" proposal. We know of no other state and federal decision-making process and program of this magnitude, which is constructed this way. The ROD must provide analysis about the other governance alternatives that were reviewed and not selected because the environmental and public benefits are lower by including local government and other elected officials in the governance structure.

The Framework recommends that independent scientific review of the CALFED program begin **after** the highly controversial CALFED water supply and water demand baseline is incorporated into the ROD. Independent science needs to begin with an independent evaluation of the baseline. Baseline data, methodologies and assumptions are the proper places to engage the best independent science. Baseline issues such as surface and ground water supplies, sectoral and seasonal water demands, water quality for drinking water and for endangered species are highly controversial. Different numbers indicate wildly different solutions to water supply, demand and quality problems in the Delta and throughout the solution area for the Delta. A transparent and independent science evaluation of California's water baseline (water supply, water demand, water quality, and regulatory water etc.) is essential for moving equitable and durable water solutions forward. A public interest, user friendly independent science water budget will facilitate progress in the following areas:

Clarifying the spatial, temporal and quality characteristics of the 2MAF to 8MAF water shortage,

Clarifying the export and local use characteristics of conjunctive use projects,

Clarifying the quality, quantity and timing characteristics of water transfers, all along the transfer route from the area(s) of origin to the area(s) of use,

Clarifying the safe perennial yield of groundwater basins,

August 8, 2000
CALFED Bay-Delta Program
Attn: Steve Ritchie
Page 6

Clarifying environmental water use, its storage and transfer characteristics and effects- for both regulatory water and purchased (EWA) water,

Clarifying the local and statewide costs and benefits of current CALFED actions and proposed CALFED actions in order to allocate costs and benefits fairly,

Developing a water budget at the right scale and resolution to track the cumulative effect of hundreds of community scale water efficiency, water quality, water supply, and environmental enhancement projects, and,

Developing a water budget at the right scale and resolution to address climate change.

We understand that the barriers to developing the best scientific approaches to a water budget are political rather than technical. The best independent science is currently available to develop a multi-scale, transparent, user-friendly water budget. It has been offered to CALFED and is not being used.

CONCLUDING RECOMMENDATIONS:

The ROD must disclose the effects of the following "Framework" recommendations if they are incorporated into the CALFED Record of Decision:

What are the environmental and economic effects of committing the state and federal governments to providing SWP and CVP export increases? Page 18 of the "Framework" states that, *"this pumping increase will increase export capability by up to 100,000 acre feet per month."*

What are the environmental and economic effects of exempting the export pumps from the Endangered Species Act, and leaving all other parties in the Bay-Delta watershed responsible for complying with and implementing the Endangered Species Act?

What are the environmental and economic effects of committing the state and federal government to determining the water quality needs of the state's people and Delta's endangered species by measuring water quality only at the pumps, and using that limited criterion to initiate construction of the Hood Diversion?

What are the environmental effects of using the EWA, rather than the ESA, as **the** predominant regulatory solution to the Delta's fish mortality and aquatic habitat degradation problems? How does the EWA compensate for other effects of increased pumping such as fish entrainment, food

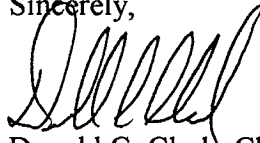
August 8, 2000
CALFED Bay-Delta Program
Attn: Steve Ritchie
Page 7

web entertainment and other affects which cannot be reduced, eliminated or mitigated by adding more water from the north state?

What are the environmental effects of committing the state and federal governments to rely on such poor and controversial baseline information, without the benefit independent science review? Why is CALFED refusing to utilize the best available independent science to develop a water budget and a more accurate regulatory, supply, demand and quality baseline?

Thank you for allowing Plumas County this last chance to comment constructively on the CALFED Program.

Sincerely,



Donald C. Clark, Chair
Plumas County Board of Supervisors.

DC/rb